IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.579 OF 2002

M/s. Liva Pharma Limited .. Appellant
V/s.
Commissioner of Income-tax,
City-VIII, Mumbai .. Respondent.

Mr.B.V. Jhaveri with Mr.A.R. Singh for the appellant.
Ms.S.V. Bharucha i/b. K.B. Rao for the respondent.

CORAM : R.M. LODHA &
J.P. DEVADHAR, JJ.

DATED : 26TH AUGUST, 2004.

P.C. :

. Heard Mr.B.V. Jhaveri, the learned counsel for the appellant-assessee.

2. The Tribunal considered the matter thus:

> . After considering all these facts we are of the view that the revenue authorities in this case were silent in respect of any research carried on by the assessee. The assessee has to establish that the distribution of sample was also in respect of some research in addition to claiming the business expediency. Considering this aspect, we, therefore, direct the A.O. to further investigate the entire claim in the light of the aforesaid decisions. As far as the cited decision of Tribunal in assessee's own case, as referred above, we have found that the assessment year under

> consideration was 84-85 and the same being the first year of production, therefore considering this fact the Tribunal has allowed the claim. The Tribunal has specifically mentioned and recorded a finding that the assessee started its production only in the previous year relevant to the year under appeal and had to accede to the demand made by M/s. Camlin Ltd. who were the sole Distributors of the assessee company. However, the facts for the year under consideration are not identical because the assessee is continuously in production since past so many years, therefore, the reliance as made by ld. A.R. cannot be accepted. As we have observed above the claim of the assessee deserves to be enquired afresh we hereby reverse the finding of ld. CIT(A) and restore this issue to the file of the A.O.

3. The aforesaid order does not call for any interference.

4. However, we clarify that while considering the aforesaid issue afresh, the Assessing Officer shall keep in mind that sub-section 3(A) to 3(D) of Section 37 of the Income Tax Act, 1961 were not on the statute book for the Assessment Year 1990-91.

5. With the aforesaid order, the appeal is dismissed.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)